

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.38 OF 2007
IN
WRIT PETITION NO.544 OF 2003**

Sunglow Electronics Pvt. Ltd. and ors..Petitioners
V/s.

Janakalyan Sahkari Bank Ltd. and ors...Respondents

Mr.Dipesh U. Siroya i/b. Lalit Jain for the
petitioners
Ms.Mamta Sadh i/b. V.Deshpande & Co. for the
respondent No.1

CORAM : V.C.DAGA, J.

DATE : 12TH FEBRUARY, 2007

P.C.

1. Heard the learned counsel appearing for the respondent No.1 Bank. Perused Notice of Motion. The learned counsel for the petitioners state that he has no instructions to oppose notice of motion seeking vacation of interim order dated 25th April, 2003 which is operating in favour of the petitioners past 3 years where interim relief in terms of prayer clause (b) was granted on a condition that the petitioners will not dispose of,

transfer, assign or create any encumbrance on the properties mortgaged to the respondent No.1.

2. The affidavit by the respondent-Bank filed in support of the motion makes out by them, a case of huge recovery from the petitioners by the respondent-Bank is made out. It has also made out in the affidavit that the petitioners did not resort to the alternate remedy inspite of its availability in view of the provisions of Section 154 of the Maharashtra Co-operative Society Act. In the submission of the bank only to by pass strict compliance of the provision requiring deposit of 50% of the amount of the Recovery Certificate with the Bank is the cause to by pass the said available alternate remedy.

3. The petitioners inspite of service of motion did not care to file reply to the notice of motion. At the time of hearing the learned counsel for the petitioners was specifically asked whether he would like to file any reply to the notice of motion to oppose it. To this he answered in the negative and

stated in the open Court that he does not want to file any reply in opposition. In view of this, statements made in the affidavit are remained uncontroverted. The petitioners without any justification did not resort to the alternate remedy. Under these circumstances, I have no option but to vacate interim relief granted by this Court dated 25th April, 2003 for want of any opposition.

4. The motion is accordingly made absolute in terms of prayer clause (a) with no order as to costs.

(V.C.DAGA, J.)